

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

TODD C. BANK, *on behalf of himself and all other
similarly situated individuals*,

Plaintiff,

v.

SIMPLE HEALTH PLANS, LLC, SIMPLE
INSURANCE LEADS, LLC, STEVEN J.
DORFMAN, and MATTHEW E. SPIEWAK,

Defendants.

MARGO K. BRODIE, United States District Judge:

Plaintiff Todd C. Bank commenced the above-captioned action on behalf of himself and all other similarly situated individuals against Simple Health Plans, LLC, Simple Insurance Leads, LLC (collectively, the “Corporate Defendants”), Stephen J. Dorfman, and Matthew E. Spiewak (the “Individual Defendants”) on November 13, 2018. (Compl. ¶¶ 2, 5–9, 41, Docket Entry No. 1.) Plaintiff alleges that Defendants sent him and thousands of others unsolicited text messages in violation of the Telephone Consumer Protection Act (“TCPA”), 47 U.S.C. § 227.¹ On April 10, 2019, Plaintiff moved for default judgment against the Individual Defendants seeking (i) an order that the Individual Defendants are liable for violating the TCPA (“Motion for Default Judgment”), (Mot. for Def. J. 19, Docket Entry No. 14), and (ii) leave to take discovery in support of his anticipated motion for class certification, (*id.* at 17–19). By order dated April 11, 2019, the Court referred the Motion for Default Judgment to Magistrate Judge

¹ Because Plaintiff’s Motion for Default Judgment is not consecutively paginated, the Court refers to the page numbers assigned by the Electronic Case Filing (“ECF”) system.

ORDER

18-CV-6457 (MKB) (ST)

Steven L. Tiscione for a report and recommendation. (Order dated Apr. 11, 2019.) By letter dated April 25, 2019, Dorfman, proceeding *pro se*, filed a motion to strike the Clerk of Court's entry of default and Plaintiff's Motion for Default Judgment on the grounds that this action should be stayed pursuant to a Notice of Receivership issued by the Honorable Judge Darrin P. Gayles in the United States District Court for the Southern District of Florida ("April 25, 2019 Letter"). (Apr. 25, 2019 Letter, Docket Entry No. 15.)

By Report and Recommendation dated December 12, 2019, (the "R&R"), Judge Tiscione recommends that the Court deny the motion to stay the action against the Individual Defendants because the Notice of Receivership and Stay issued by Judge Gayles does not apply to the Individual Defendants. (R&R at 9.) Judge Tiscione explains that Judge Gayles intentionally excluded the Individual Defendants by limiting the stay to the "Receivership Entities" and therefore did not intend for the stay to enjoin actions against them. (*See id.* at 5–6.) In addition, Judge Tiscione recommends that the Court deny Plaintiff's Motion for Default Judgment against the Individual Defendants without prejudice, and that Plaintiff be granted leave to file an amended complaint. (*Id.* at 17.) No party has objected to the R&R and the time for doing so has expired.

A district court reviewing a magistrate judge's recommended ruling "may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge." 28 U.S.C. § 636(b)(1)(C). "Where parties receive clear notice of the consequences, failure to timely object to a magistrate's report and recommendation operates as a waiver of further judicial review of the magistrate's decision." *Smith v. Campbell*, 782 F.3d 93, 102 (2d Cir. 2015) (quoting *Mario v. P&C Food Markets, Inc.*, 313 F. 3d 758, 766 (2d Cir. 2002) (citing *Small v. Sec'y of Health & Human Servs.*, 892 F. 2d 15, 16 (2d Cir. 1989) (per curiam))); *see*

also Sepe v. N.Y. State Ins. Fund, 466 F. App'x 49, 50 (2d Cir. 2012) (quoting *United States v. Male Juvenile*, 121 F.3d 34, 38 (2d Cir. 1997)); *see also Almonte v. Suffolk Cty.*, 531 F. App'x 107, 109 (2d Cir. 2013) (“As a rule, a party’s failure to object to any purported error or omission in a magistrate judge’s report waives further judicial review of the point.” (quoting *Cephas v. Nash*, 328 F.3d 98, 107 (2d Cir. 2003))); *Wagner & Wagner, LLP v. Atkinson, Haskins, Nellis, Brittingham, Gladd & Carwile, P.C.*, 596 F.3d 84, 92 (2d Cir. 2010) (“[A] party waives appellate review of a decision in a magistrate judge’s [r]eport and [r]ecommendation if the party fails to file timely objections designating the particular issue.” (citations omitted)).

The Court has reviewed the unopposed R&R and, finding no clear error, adopts the R&R in its entirety pursuant to 28 U.S.C. § 636(b)(1). Accordingly, the Court denies Dorfman’s motion to stay and Plaintiff’s Motion for Default Judgment against the Individual Defendants without prejudice, and grants Plaintiff leave to file an amended complaint.

Dated: February 6, 2020
Brooklyn, New York

SO ORDERED:

s/ MKB
MARGO K. BRODIE
United States District Judge